

Vermont State Hospital Policy & Procedure	Page 1 of 5	New <input type="checkbox"/> Updated <input type="checkbox"/> Revision <input checked="" type="checkbox"/>	DRAFT # 7 5/14/07
Title: Advance Directives and Organ and Tissue Donation Policy			
Advanced by: VSH Policy Committee			Date: 5/7/07
Approved by: VSH Governing Body			Date: 5/16/07

Policy Statement:

The Vermont State Hospital recognizes and supports an adult patient's right to self-determination with regard to health care decisions; including treatment provided during periods of incapacity and at the end of life, and will, to the full extent required by law, honor a patient's advance directive. VSH will not refuse healthcare to any patient because the patient has executed an advance directive. Nor will VSH require a patient to execute an advance directive as a condition of receiving healthcare or charge a patient a different rate for care on account of the patient's having executed an advance directive.

Purpose:

To ensure that in every case where a patient has executed an advance directive, hospital staff shall without delay obtain a copy of the advance directive and, to the full extent required by law, comply with the instructions contained therein.

Authority:

18 VSA §9700 et. seq. - Vermont Advance Directive Statutes
Vt. Code R. 13 140 066 – VDH Advance Directives For Health Care Rules
42 U.S.C. §1395cc(a) - Patient Self Determination Act

Procedures:

I. Advance Directives:

a. Admission Staff Responsibilities

Prior to or as soon as possible after admission to VSH, admission staff will verify whether the patient has an advance directive for health care, including any amendment, suspension or revocation thereof. Staff will: (1) ask the patient directly whether he or she has an advance directive; (2) check the hospital's internal electronic database; and (3) check the Vermont Advance Directive Registry.

Where the patient has an advance directive or DNR order, admission staff will ensure that a copy of the advance directive, including any amendment, suspension or revocation thereof or DNR order is promptly made available to the patient's treatment team. The existence of any advance directive or DNR order, as well as its amendment, suspension, or revocation, shall be prominently noted on the patient's file jacket or folder and entered into the hospital's electronic database. Patients with advance directives that have not been submitted to the Vermont Advance Directive Registry will be informed of the

registry, encouraged to submit their advance directive or a notice of the advance directive to the registry and assisted in doing so when requested.

Admission staff and/or Health Information/ Medical Records staff shall accept advance directives, including any amendment, suspension or revocation thereof, and DNR orders from any individual who is not a patient of VSH but who thinks that he/she might possibly become a patient at VSH in the future. Copies of any such advance directives shall be maintained in the person's patient file and noted in the hospital's electronic database.

Patients will receive "Taking Steps to Plan for Critical Health Care Decisions" by the Vermont Ethics Network in their patient admission packet. The admission packet shall also contain a blank model advance directive form from the Vermont Department of Health. When a patient expresses further interest in learning about advance directives, staff shall inform the Director of Social Services or designee, who shall ensure that the patient is provided with any additional information or assistance concerning advance directives that the patient may require.

When a patient is discharged from VSH, a copy of any advance directive or DNR order will be transmitted with the patient, or if the discharge is to another health care facility or residential care facility, transmitted to the subsequent facility.

b. Medical Staff Responsibilities

Except on an emergency basis, medical staff shall not provide health care to a patient that lacks capacity without first attempting to determine whether the patient has an advance directive in effect.

1. Reviewing the Advance Directive

When VSH medical staff become aware that any patient has an advance directive, staff shall, as soon as possible, review the advance directive to determine if any of the following conditions exist:

- A. an instruction in the advance directive is clearly inconsistent with another instruction in the advance directive or inconsistent with the law;
- B. an instruction would cause the treating physician or VSH to violate any criminal law or the standards of professional conduct required by a professional licensing board or agency, or
- C. an instruction creates a moral, ethical or other conflict for the treating physician or other VSH staff and they are unwilling to follow the instruction.

If either condition A or B above exist, VSH shall: fully inform the patient if possible, and any agent or guardian of the reasons for the problem, and document in the patient's

medical record, the existence of the problem, the reasons for the problem and the steps taken to resolve the conflict, and the ultimate resolution of the conflict.

If condition C above exists, VSH shall: fully inform the patient, if possible, and any appointed agent or guardian of the conflict; assist the patient, agent or guardian in the transfer of care to another provider who is willing to honor the instruction; provide on-going health care until a new provider has been found and document in the patient's medical record, the conflict, the steps taken to resolve the conflict and the resolution, if any.

Whenever there are questions relating to a patient's advance directive, the patient's physician or a treatment team member should consult with Legal Division to help resolve the questions or determine whether it may be appropriate to seek an order from the probate court clarifying the Hospital's rights and responsibilities.

2. Activating the Advance Directive.

An advance directive becomes effective when the patient's treating physician does the following:

- A. Determines, after speaking with an interested individual if one is reasonably available, that the patient lacks capacity.
- B. makes specific findings regarding the cause, nature, and projected duration of the individual's lack of capacity, and documents those findings in the patient's medical record.
- C. makes reasonable efforts to inform the patient, the patient's guardian, or the agent identified in the advance directive, of his or her determination.

An advance directive may also become effective upon execution if specified in the advance directive, or when the circumstance or condition specified within the advance directive has been met.

Upon request of the patient, the patient's agent or guardian, an ombudsperson, other health care provider or any interested individual, the patient's treating physician, another physician or designee shall reexamine the patient to determine whether the patient lacks capacity. The clinician conducting the reexamination shall document the results of the reexamination in the patient's medical record and shall make reasonable efforts to notify the patient, the agent or guardian as well as the individual who initiated the new determination of capacity of the results of the reexamination providing that such notice is consistent with HIPAA.

3. Following the Advance Directive.

When a patient's advance directive is in effect, VSH medical staff shall follow the instructions of the person, whether agent or guardian, who has authority to make health care decisions for the patient, or the instructions contained in the advance directive, unless and until any of the following conditions exist:

- A. An instruction by the agent is clearly inconsistent with the advance directive or the law and the agent has not provided satisfactory support for the instruction or, where there is a guardian, the guardian has not obtained an order from probate court specifically authorizing the instruction;
- B. An instruction would cause the treating physician or VSH to violate any criminal law or the standards of professional conduct required by a professional licensing board or agency, or
- C. An instruction creates a moral, ethical or other conflict for the treating physician or other VSH staff and they are unwilling to follow the instruction.

If either condition A or B above exist, VSH shall: fully inform the patient if possible, and any agent or guardian of the reasons for the problem, and document in the patient's medical record, the existence of the problem, the reasons for the problem and the steps taken to resolve the conflict, and the ultimate resolution of the conflict.

If condition C above exists, VSH shall: fully inform the patient, if possible, and any appointed agent or guardian of the conflict; assist the patient, agent or guardian in the transfer of care to another provider who is willing to honor the instruction; provide on-going health care until a new provider has been found and document in the patient's medical record, the conflict, the steps taken to resolve the conflict and the resolution, if any.

In cases where the advance directive is unclear, or there are any questions about the advance directive or an agent or guardian's instructions regarding care, the patient's physician or a member of the patient's treatment team should consult with Legal Division to help resolve the questions or determine whether it may be appropriate to seek an order from the probate court clarifying the Hospital's rights and responsibilities.

In those circumstances where there is more than one adult identified as the agent, the treating physician may rely on the decision of one of the identified agents as long as the physician documents in the patient's medical record that the agent confirms that: all agents agree on the pending health care decision; all agents agree that this agent can make any pending health care decisions; or the other agent or agents are not reasonably available.

4. Providing care when the patient objects

Even in cases where the patient has been found to lack the capacity to make or communicate a health care decision and an advance directive has become activated, VSH

may not administer healthcare or follow an agent's instruction to administer health care over the patient's objection, unless:

- A. The patient lacks capacity, will suffer serious and irreversible bodily injury or death if the health care cannot be provided within 24 hours, and:
 - 1. The patient does not have an agent or an applicable provision in an advance directive or the agent is not reasonably available; or
 - 2. The agent or advance directive authorizes providing or withholding the care.
- B. The agent authorizes providing or withholding the healthcare and the advance directive contains a provision permitting the agent, in the event that the patient lacks capacity, to authorize or withhold treatment over the patient's objection. Such a provision (also called a "Ulysses Clause") is only valid if it meets the following requirements:
 - 1. An agent is named in the provision.
 - 2. The agent has accepted in writing the responsibility of authorizing or withholding health care over the patient's objection in the event that the patient lacks capacity.
 - 3. The provision is signed by a clinician for the patient affirming that, at the time the provision was executed, the patient appeared to understand the benefits, risks, and alternatives to the health care being authorized or rejected by the patient in the provision.
 - 4. An ombudsperson, recognized member of the clergy, attorney licensed to practice law in Vermont, or a probate court designee, independent from VSH, has signed the provision affirming that he or she explained the nature and effect of the provision to the patient and that the patient appeared to understand the explanation and be free from duress or undue influence.
 - 5. The provision specifies the treatments to which it applies and includes an explicit statement that the patient desires or does not desire the proposed treatments even over the patient's objection at the time the treatment is offered or withheld.
 - 6. The provision includes an acknowledgement that the patient knowingly and voluntarily waived the right to refuse or receive treatment at a time of incapacity and that the patient understood that his/her treating physician or other clinician will determine capacity.

7. The “Ulysses Clause” provision becomes effective only after two physicians have certified in the patient’s medical record that the patient lacks the capacity to make or communicate a health care decision.

5. De-activating the advanced directive

Upon a determination by the patient’s physician that the patient has regained the capacity to make or communicate a health care decision, or when the circumstance or condition specified in the advance directive is no longer met, the authority of any agent for health care identified in the advance directive shall terminate.

6. Advance Directives and guardians for health care

Generally, all decisions covered by an advance directive are subject to the advance directive and the agent’s instructions. However, where the probate court has appointed a guardian for the health care of the patient, a guardian’s instructions only take precedence over instructions contained in the advance directive or given by the agent when those instructions relate directly to powers expressly given to the guardian by the probate court. Without a **specific** probate court order, a guardian’s instructions do not supersede an instruction by the agent or in the advance directive.

c. Director of Social Services Responsibilities

The Director of Social Services or designated Social Services staff members are the VSH employees charged with explaining the nature and effect of an advance directive to any patient requesting such information. The Director of Social Services or designee shall periodically ask patients whether they have an advance directive, check the Vermont Advance Directive Registry to see if the patient has registered an Advance Directive and explore a patient’s interest in executing an advance directive at six month intervals. Upon request, the Director of Social Services or designee shall assist patients in submitting an advance directive, or amendment, suspension, or revocation thereof to the Vermont Advance Directive Registry.

1. Process for Patients Executing Advance Directives

If and when a patient requests assistance executing an advance directive, the Director of Social Services or designee shall ensure the following steps are taken:

- A. The Director of Social Services or designee shall meet with the patient to explain the nature and effect of an advance directive, review the materials provided to the patient upon admission regarding advance directives, provide the patient with an advance directive form and, upon request, assist the patient to complete the form or assist the patient to request advice or assistance from his/her lawyer, advocate, friend or other person. Social Services staff shall document in the patients medical record the extent to which he/she believes that the patient understands the nature and effect of an advance directive.

- B. The Director of Social Services or designee or an ombudsman, a recognized member of the clergy, licensed attorney, or probate court designee shall sign a statement that he/she has explained the nature and effect of the advance directive to the patient.
- C. In order to be valid, the advance directive must be dated and signed by the patient (or by another individual in the patient's presence at the patient's express direction if the patient is physically unable to do so), and signed in the presence of at least two witnesses who are at least 18 years old. The witnesses must also sign, date and affirm that the patient appeared to understand the nature of the document and to be free from duress or undue influence at the time the advance directive was signed. The witnesses may not be the proposed health care agent, patient's spouse, reciprocal beneficiary, parent, sibling, adult child or grandchild or VSH employee. Upon request, the Director of Social Services or designee shall assist the patient to contact his/her attorney or other family, friends or advocates that may be able to assist the patient to execute an advance directive.
- D. The Director of Social Services or designee shall immediately notify Health Information / Medical Records who will place the original Advance Directive in the patient's medical record and attach an Advance Directives sticker to the front of the patient's chart. Health Information/ Medical Records will also notify Admission's staff to update the hospital electronic data base. Social Services staff shall also notify the patient's treating physician of the existence of the patient Advance Directive.
- E. The Director of Social Services or designee shall request that, as soon as possible, the patient's treating physician document in the patient's medical record, his or her opinion and the reasons supporting that opinion as to whether the patient had capacity at the time the advance directive was executed. If it is the physician's opinion that the patient lacked capacity at the time the advance directive was executed, he or she shall, as soon as possible, notify the patient, the patient's agent and the patient attorney of his/her opinion. The treating physician shall also review the Advance Directive consistent with Medical Staff responsibilities outlined in (b) above.
- F. Patients executing an advance directive while at VSH will be encouraged and assisted in providing a copy of or notice of their Advance Directive to the Vermont Advance Directives Registry.

2. Revocation, Suspension, or Amendment of an Advance Directive

The Director of Social Services or designee shall be notified of any patient request to amend, revoke, or suspend an existing Advance Directive. When they receive such a request, Social Service staff will assist the patient as requested and as follows:

- A. Except as provided in subsection (D) below, any patient may amend, suspend, or revoke an advance directive or any specific instruction in an advance directive by executing a new advance directive or instruction as provided for in c(1) above.
- B. Except as provided in subsection (D) below, any patient may suspend or revoke all or any part of an advance directive by:
 - 1. signing a statement suspending or revoking any part instruction in their advance directive including the designation of an health care agent or
 - 2. by personally informing his or her treating physician of the request
 - 3. destroying or expressly directing the destruction of the advance directive in the patient's presence.
 - 4. any other act evidencing a specific intent to suspend or revoke.
- C. Social Services staff shall document any of the above actions in the patient's medical record and shall request that, as soon as possible, the patient's treating physician document in the patient's medical record, his or her opinion and the reasons supporting that opinion as to whether the patient had capacity at the time the advance directive was amended, suspended or revoked.
- D. **Suspending or revoking a so-called "Ulysses Clause."** A patient may only suspend or revoke a so-called "Ulysses Clause" (Sec. b (4) above) if the patient has been determined to have capacity.
- E. When a physician or the social services staff member becomes aware of an amendment, suspension or revocation of an advance directive of any patient, they shall make reasonable efforts to: confirm the amendment, suspension or revocation; record the amendment, suspension, or revocation in the patient's medical records; and, flag the amendment, suspension, or revocation in the patient's medical folder or on the front of any advance directive filed in the medical record;
- F. The Director of Social Services or designee shall also notify, or assist the patient to notify, the principal, agent, and guardian of the amendment, suspension, or revocation; and inform, or assist the patient to inform the Vermont Advance Directive Registry of the amendment, suspension or revocation.

d. Agent's Authority

VSH shall ensure that, to the extent the advance directive does not provide otherwise, an agent or guardian has the same rights as the patient to:

1. Receive information regarding individual's physical or mental health, including access to medical records;
2. Participate in meetings concerning the patient's health;
3. Consent to the disclosure of health information;
4. File a grievance on behalf of the patient.
5. Make health care decisions on behalf of the patient, to the extent specified in the advance directive.

II. Organ and Tissue Donation

Patients will receive organ and tissue donation information provided by the New England Organ Bank (NEOB) upon admission to VSH.

Nursing staff will verify that the patient has received organ and tissue donation information and will address questions raised by the patient with regard to possible donation.

III. Do-Not-Resuscitate (DNR) Orders

For a DNR order to be valid it must: be signed by the patient's treating physician; certify that the physician has consulted, or made an effort to consult with the patient and the patient's agent or guardian if one is appointed. In addition, a DNR order must include either: the name of the patient, agent or other individual giving informed consent for the DNR and the individual's relationship to the patient; or certification that the patient's treating physician and one other named physician have determined that resuscitation would not prevent the imminent death of the patient, should the patient experience cardiopulmonary arrest.

VSH and a patient's treating physician shall honor a DNR order or a DNR identification unless VSH or the physician: believes in good faith, after consultation with the agent or guardian (when possible and appropriate) that the patient wishes to have the DNR order revoked; or the patient with the DNR notification is not the individual for whom the DNR order was issued; and documents the basis for the belief in the patient's medical record. §9708(4)

VI. Penalties

Any VSH patient care provider that has knowledge of a patient's advance directive or an instruction of an agent or guardian and fails to act in accordance with that advance directive or instruction may be subject to review and disciplinary action by an appropriate licensing authority.

V. Care Documents Executed Prior to September 1, 2005

A durable power of attorney for health care (DPOA for health care), terminal care document, or advance directive executed prior to September 1, 2005 shall be a valid advance directive if the document complies with the laws in effect at the time the document was executed. Health Information / Medical Records and/or a patient's treatment team that becomes aware of such a document should consult Legal Division.

VI. Definitions

"Advance directive" means a properly executed written record which may include appointment of an agent, identification of a preferred primary care clinician, instructions on health care desires or treatment goals, an anatomical gift, disposition of remains, and funeral goods and services. The term includes documents previously known as a durable power of attorney for health care or a terminal care document.

"Agent" means an adult with capacity to whom authority to make health care decisions is delegated under an advance directive, including an alternate agent if the agent is not reasonably available.

"Capacity" means an individual's ability to make and communicate a decision regarding the issue that needs to be decided. An individual shall be deemed to have capacity to appoint an agent if the individual has a basic understanding of what it means to have another individual make health care decisions for oneself and of who would be an appropriate individual to make those decisions, and can identify whom the individual wants to make health care decisions for the individual. An individual shall be deemed to have capacity to make a health care decision if the individual has a basic understanding of the diagnosed condition and the benefits, risks, and alternatives to the proposed health care.

"Do-not-resuscitate order" or "DNR order" means a written order of the patient's clinician directing health care providers not to attempt resuscitation. A DNR order precludes efforts to resuscitate only in the event of cardiopulmonary arrest and does not affect other therapeutic interventions that may be appropriate for the patient.

"DNR identification" means a document, bracelet, other jewelry, wallet card, or other means of identifying the patient as an individual who has a DNR order.

"Guardian" means a person appointed by the probate court who has the authority to make medical decisions pursuant to subdivision 3069(b)(5) of Title 14.

"Health care" means any treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition, including services provided pursuant to a clinician's order, and services to assist in activities of daily living provided by a health care provider or in a health care facility or residential care facility.

"Health care decision" means consent, refusal to consent, or withdrawal of consent to any health care.

"Informed consent" means the consent given voluntarily by an individual with capacity after being fully informed of the nature, benefits, risks, and consequences of the proposed health care, alternative health care, and no health care.

"Interested individual" means: the patient's spouse, adult child, parent, adult sibling, adult grandchild, reciprocal beneficiary, or clergy person; or any adult who has exhibited special care and concern for the principal and who is personally familiar with the patient's values. For purposes of the policy, a VSH staff person, contractor or consultant may not be considered an "interested individual."

"Life sustaining treatment" means any medical intervention, including nutrition and hydration administered by medical means and antibiotics, which is intended to extend life and without which the principal is likely to die

"Ombudsman" means an individual appointed as a long-term care ombudsman under the program contracted through the department of aging and independent living.

"Reasonably available" means able to be contacted with a level of diligence appropriate to the seriousness and urgency of a principal's health care needs, and willing and able to act in a timely manner considering the urgency of the patient's health care needs.

"Registry" means the Vermont Advance Directives Registry, a secure, web-based database created and maintained by the Vermont Department of Health which individuals may submit an advance directive or information regarding the location of an advance directive that is accessible to people with advance directives and agents and, as needed, to individuals appointed to arrange for the disposition of remains, procurement organizations, health care providers, health care facilities, residential care facilities, funeral directors, crematory operators, cemetery officials, probate court officials, and the employees thereof.

"Suspend" means to terminate the applicability of all or part of an advance directive for a specific period of time or while a specific condition exists.